

AMENDED IN SENATE APRIL 8, 2014

AMENDED IN SENATE MARCH 26, 2014

SENATE BILL

No. 1348

Introduced by Senator DeSaulnier

February 21, 2014

An act to add Chapter 22.3 (commencing with Section 22590) ~~to Division 8~~ *to Division 8* of the Business and Professions Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1348, as amended, DeSaulnier. Online data brokers: sale of personal information: notice.

Existing law protects the privacy of personal information, including customer records, and requires a business that owns or licenses personal information about a California resident to implement and maintain reasonable security procedures and practices appropriate to the nature of the information, in order to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

Existing law requires an operator of a commercial Internet Web site or online service that collects personally identifiable information through the Internet about consumers residing in California who use or visit its commercial Internet Web site or online service to conspicuously post its privacy policy on its Internet Web site or online service and to comply with that policy.

This bill would require an online data broker, as defined, that sells to a 3rd party the personal information of any resident of California, to allow ~~an individual~~ *a subject individual, as defined*, to review his or her personal information, either pursuant to a written request or by means of an electronic search through a secure online system. The bill

would require an online data broker, *unless prohibited by federal law*, to conspicuously post an opt-out notice on its Internet Web site, as specified, that would provide specific instructions for permanently removing personal information from the online data broker's database by making a written demand requesting to have the information permanently removed. The bill would require an online data broker that receives a written demand from ~~an~~ *a subject* individual pursuant to these provisions, *unless prohibited by federal law*, to remove the *subject* individual's personal information from public display on the Internet within 10 days of delivery of the written demand, and to take specified additional steps to ensure that the information is not reposted.

This bill would also make it unlawful for an online data broker to solicit or accept the payment of a fee or other consideration to review or permanently remove personal information from the online data broker's database, and would authorize a subject individual to bring a civil action against any person in violation of these provisions. The bill's provisions would apply only to information collected, assembled, or maintained by an online data broker on and after January 1, 2015, except under designated circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 22.3 (commencing with Section 22590)
2 is added to Division 8 of the Business and Professions Code, to
3 read:

4
5 CHAPTER 22.3. ONLINE DATA BROKERS

6
7 22590. The following definitions apply to this chapter:

8 (a) "Conspicuously post," with respect to an opt-out notice,
9 means to post through any of the following:

10 (1) An Internet Web page on which the actual opt-out notice is
11 posted if the Internet Web page is the homepage or first significant
12 page after entering the Internet Web site.

13 (2) An icon that hyperlinks to an Internet Web page on which
14 the actual opt-out notice is posted, if the icon is located on the
15 homepage or the first significant page after entering the Internet
16 Web site, and if the icon contains the term "opt out" or "opt-out."

1 The icon shall also use a color that contrasts with the background
2 color of the Internet Web page or is otherwise distinguishable.

3 (3) A text link that hyperlinks to an Internet Web page on which
4 the actual opt-out notice is posted, if the text link is located on the
5 homepage or first significant page after entering the Internet Web
6 site, and if the text link does one of the following:

7 (A) Includes the term “opt out” or “opt-out.”

8 (B) Is written in capital letters equal to or greater in size than
9 the surrounding text.

10 (C) Is written in larger type than the surrounding text, or in
11 contrasting type, font, or color to the surrounding text of the same
12 size, or set off from the surrounding text of the same size by
13 symbols or other marks that call attention to the language.

14 (4) Any other functional hyperlink that is so displayed that a
15 reasonable person would notice it *and understand it to hyperlink*
16 *to the actual opt-out notice*.

17 (b) “Online data broker” means a commercial entity that collects,
18 assembles, or maintains personal information concerning
19 individuals residing in California who are not customers or
20 employees of that entity, for the purposes of selling the personal
21 information ~~or providing a third party with access to the~~
22 ~~information over the Internet to a third party~~.

23 (c) “Personal information” means any information that identifies,
24 relates to, describes, or is capable of being associated with, a
25 particular individual, including, but not limited to, his or her name,
26 signature, social security number, physical characteristics or
27 description, address, telephone number, passport number, driver’s
28 license or state identification card number, insurance policy
29 number, education, employment, employment history, bank account
30 number, credit card number, debit card number, or any other
31 financial information, medical information, or health insurance
32 information. “Personal information” does not include ~~publicly~~
33 ~~available~~ information that is lawfully made available to the general
34 public from federal, state, or local government records.

35 (d) “Publicly post” or “publicly display” means to intentionally
36 communicate or otherwise make available to the general public.

37 (e) “Subject individual” means the person to whom personal
38 information pertains.

1 (f) “Written” means documentation in writing, and includes
2 facsimile, telegraphic, and other forms of electronic
3 communication.

4 ~~22592.~~

5 22591. An online data broker that sells or provides to a third
6 party the personal information of any resident of California to a
7 third party, shall permit ~~an~~ a subject individual to review his or
8 her personal information that has been collected, assembled, or
9 maintained by the online data broker, either by submitting a written
10 request or by means of an electronic search through a secure online
11 system.

12 ~~22594.~~

13 22592. (a) (1) ~~An~~ Unless prohibited by federal law, an online
14 data broker shall conspicuously post an opt-out notice on its
15 Internet Web site, which shall include specific instructions for
16 permanently removing personal information from the online data
17 broker’s database, by making a written demand requesting to have
18 the information removed.

19 (2) If ~~an~~ a subject individual makes a written demand to remove
20 his or her personal information from an online data broker’s
21 database pursuant to this subdivision, the online data broker shall
22 permanently remove ~~an~~ the subject individual’s personal
23 information from its database, in accordance with subdivision (b).

24 (b) (1) ~~An~~ Unless prohibited by federal law, an online data
25 broker that receives a written demand from ~~an~~ a subject individual
26 pursuant to this section shall remove the subject individual’s
27 personal information from public display on the Internet within
28 10 days of delivery of the written demand, and shall ~~continue to~~
29 ensure that this information is not reposted on the same Internet
30 Web site, a subsidiary site, or any other Internet Web site owned,
31 controlled, or maintained by the online data broker receiving the
32 written demand.

33 (2) After receiving ~~the~~ a subject individual’s written demand,
34 the online data broker shall not transfer ~~an~~ the subject individual’s
35 personal information to any other person, business, or association
36 through any other medium.

37 22593. (a) It is unlawful for an online data broker to solicit
38 or accept the payment of a fee or other consideration to review or
39 permanently remove personal information from the online data
40 broker’s database.

1 ***(b) Each payment solicited or accepted in violation of this***
2 ***section constitutes a separate violation.***

3 22594. *In addition to any other sanction, penalty, or remedy*
4 *provided by law, a subject individual may bring a civil action in*
5 *any court of competent jurisdiction against any person in violation*
6 *of this chapter for damages in an amount equal to the greater of*
7 *one thousand dollars (\$1,000) per violation or the actual damages*
8 *suffered by the subject individual as a result, along with costs,*
9 *reasonable attorney's fees, and any other legal or equitable relief.*

10 22595. *(a) This chapter shall only apply to personal*
11 *information that is collected, assembled, or maintained by an*
12 *online data broker after January 1, 2015.*

13 ***(b) Notwithstanding subdivision (a), this chapter shall apply to***
14 ***information collected, assembled, or maintained by an online data***
15 ***broker prior to January 1, 2015, if the data broker collected,***
16 ***assembled, or maintained the information in violation of any law***
17 ***or regulation.***